IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	
JUST FOR FEET, INC.,	)	
	)	
Debtor.	)	Civil Action No. 01-787-KAJ
	)	
CHARLES R. GOLDSTEIN, Chapter 7 Trustee,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
HAROLD RUTTENBERG, et al.,	)	
	)	
Appellees.	)	

MEMORANDUM ORDER

Presently before this court is the State of Wisconsin Investment Board's ("SWIB's") Motion to Dismiss as moot (Docket Item ["D.I."] 26; the "Motion") the appeal of the Chapter 7 Trustee ("Appellant") from the October 3, 2001 order of the Bankruptcy Court (Bankruptcy D.I. 1585) . For the reasons that follow, SWIB's Motion is granted.

I. Background

In issuing its order, the Bankruptcy Court found that, to the extent Just for Feet, Inc., et al.'s (the "Debtors'") estate has an interest in the D&O Policy and proceeds thereof, cause exists, under section 362(d) of the Bankruptcy Code, to terminate, annul and lift the automatic stay in accordance with the relief requested in the Motion. (Bankruptcy D.I. 1585). After the court entered its order the Appellant did not seek a stay of execution pending appeal. (D.I. 29 at 3.) On March 4, 2002, the United States District Court for the Northern District of Alabama approved a class action settlement

between the plaintiff Class, which included SWIB, and former Just for Feet, Inc. employees, officers and/or directors: Harold Ruttenburg, Eric L. Tyra, Peter Berman, Cooper Evans, Patrick Lloyd, Don Allen Ruttenburg, Michael Lazarus, Helen Rockey, Scott C. Wynne, Randall L. Haines, Adam Dilburne, Robert C. Wabler, Alex M. Bond and Edward S. Croft, III ("Insured Individuals"). (D.I. 26, Ex. D at 1-2.) The settlement provided that the plaintiff Class would relinquish all claims against Insured Individuals and in return would received proceeds from Insured Individuals' D&O insurance policy. (D.I. 26, Ex. C.)

According to Appellant, the issue presented on appeal is whether the Bankruptcy Court abused its discretion in granting the Insured Individuals' motion for relief from the automatic stay. (D.I. 8 at 2.)

II. Standard of Review

This court has jurisdiction over appeals from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). On appeal, this court applies a clearly erroneous standard to the Bankruptcy Court's findings of fact and a plenary standard to its legal conclusions. *See Am. Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 80 (3d Cir. 1999). When reviewing mixed questions of law and fact, the court will accept the Bankruptcy Court's finding of "historical or narrative facts unless clearly erroneous, but [will] exercise plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to the historical facts." *Mellon Bank, N.A. v. Metro Communications, Inc.*, 945 F.2d 635, 642 (3d Cir. 1991) (internal quotes omitted).

III. Discussion

This appeal is moot. The United States Court of Appeals for the Third Circuit (the "Third Circuit") has held that "in addition to those situations covered under 11 U.S.C. § 363(m) and § 364(e), a myriad of circumstances can occur that would necessitate the grant of a stay pending appeal in order to preserve a party's position." *In re Highway Truck Drivers & Helpers Local 107*, 888 F.2d 293, 298 (3d Cir. 1989). The Third Circuit has also held that a court's holding, when that court is proceeding with the consent of the bankruptcy court, bears a presumption of regularity and is not subject to collateral attack. *Id*. Finally, the Third Circuit has held that this "broader interpretation of mootness applied in bankruptcy cases ... further[s] the need for finality of bankruptcy transaction involving third parties ...." *Id*.

In cases where the Bankruptcy Court has lifted the automatic stay the Third Circuit has held that it "is obligatory upon appellant ... to pursue with diligence all available remedies to obtain a stay of execution of the objectionable order (even to the extent of applying to the Circuit Justice for relief...), if the failure to do so creates a situation rendering it inequitable to reverse the orders appealed from." *Nordhoff Invs., Inc. v. Zenith Elecs. Corp.*, 258 F.3d 180, 186-187 (3d Cir. 2001) (internal quotations and citations omitted).

In the present case, the United States District Court for the Northern District of Alabama approved the settlement agreement between Insured Individuals and the plaintiff Class. (D.I. 26, Ex. D at 1-2.) Additionally, in January 2002, the insurance carriers in question paid out $26,200,000 in insurance proceeds to settle the class

action law suit described above as well as various state actions that were pending against the Insured Individuals. (D.I. 30, Ex. A.)

As other courts have relied on the Bankruptcy Court's order lifting the stay when entering their judgments, it would be inequitable to now reverse the Bankruptcy Court's order. See, *In re Highway*, 888 F.2d at 298. This result is logical because reversing the Bankruptcy Court would disturb the settlement the Insured Individuals and the plaintiff Class agreed to after relying on the Bankruptcy Court's order. Furthermore, Appellant failed to seek a stay of the order pending this appeal. (D.I. 29 at 3.) This failure, on the part of the Appellant, bolsters the argument that it would be inequitable to reverse the Bankruptcy Court's order.

The settlement has already been approved, and in accordance with the Bankruptcy Curt's order, Debtors' assets have been transferred to the purchasers free and clear of liens. Accordingly, the appeal before this court is moot.

IV. Conclusion

Therefore, IT IS HEREBY ORDERED that Debtor's Motion to Dismiss the appeal as moot (D.I. 26) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

DATE: October 4, 2004

Wilmington, Delaware